

# College Columns

Newsletter of The American College of Bankruptcy

## Annual Meeting Preview

Chairman Richard Gitlin will preside at the first general membership meeting of the American College of Bankruptcy to be held on April 28, 1994 at the Cosmos Club in Washington, DC. The meeting will begin at 9:30 a.m. and conclude at 1:00 p.m. The afternoon will be free. Fellows will reconvene at 7:00 p.m. for the 5th College Induction Ceremony in the U.S. Supreme Court.

We are honored that Justice Clarence Thomas has agreed to address the new class of Fellows. The induction is a ticketed event and the number of attendees must be limited for reasons of space and security. Fellows should make reservations early. The College is permitted to use the Supreme Court Chambers only at the invitation of a Justice. This is the first time that a Justice has consented to make the address. We are most appreciative that Justice Thomas has consented to speak to the College.

During the annual meeting, various Fellows will discuss ongoing projects for the College. The partnership project will be discussed in detail. John Barrett will present his views for an intended scholarly journal. Open for discussion will be a proposal that the College file Amicus briefs where appropriate. Board of Regents Chairman, Jerry Smith will lead a discussion regarding the selection of Fellows, the high qualifications for prospective Fellows and the need to receive input from the Fellows in each Circuit for the selection of Fellows for that Circuit.

There will be an opportunity for all Fellows to discuss the future of the College and its projects. Chairman Gitlin will specially stress the opportunities for Fellow involvement in the activities of the College. The last order of business will be the election of Directors. There

will be no speaker at the informal luncheon in order to promote further discourse and interaction among the Fellows.

All Fellows and those to be inducted that evening will be invited to attend the annual meeting. We thank Murray Drabkin for arrangements at the Cosmos Club. Questions regarding the meeting or induction ceremony may be directed to Caroline or Beth at 202/544-1195.

## College Hosts Reception at NCBJ



▲ Hon. David  
W. Houston, III

The American College of Bankruptcy held a reception in conjunction with the National Conference of Bankruptcy Judges Annual Meeting in Orlando, Florida in October. Over 100 Fellows and spouses were in attendance.

Hon. David W. Houston, III, NCBJ President and Fellow of the Class of 1993, gave welcoming remarks at the event. The affair was such a success that the College plans to host another reception at the NCBJ in Toronto next year.



▲ Pictured left to right, Barbara Samorajczyk, Stanley Samorajczyk, Ilse Ashland, Hon. Calvin K. Ashland, and Hon. Elizabeth Perris enjoy the College Reception at the NCBJ in Orlando.

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Beth Gilkeson  
Coordinator  
Washington, DC

## American College of Bankruptcy

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# American College of Bankruptcy Changes to By-Laws

The By-Laws of the College provide for its governance and membership. They are divided into fifteen Articles to cover election to fellowship, officers, Board of Directors, Board of Regents, Circuit Admissions Council, voting procedures, meetings, et.

In 1993 several By-Law changes were approved by the Board of Directors to regulate or implement the following:

1. *Membership.* The provisions concerning membership have essentially remained the same since the initial By-Laws were adopted. A provision was added restricting admission to one (1) candidate per firm per year in a federal judicial circuit. The Board of Directors is also presently considering appropriate amendments to the admissions standards for members of the judiciary, and this will be formulated and addressed in the Spring of 1994.

2. *Board of Directors.* Beginning in 1994, one-third (1/3) of the Board of Directors will be elected by a majority vote of the Fellows (excluding honorary or emeritus Fellows). This will require the selection of five (5) directors in 1994. Three (3) current directors will therefore be subject to the reelection process (Richard Gitlin, Honorable William E. Norton, and Gerald R. Smith). A director serves for a term of three (3) years. Other current directors will be subject to reelection in 1995 and 1996, by which time the existing eight member Board of Directors will have been expanded to fifteen (15).

The By-Laws were also amended to now authorize the Board of Directors to appoint an Executive Committee consisting of the Chair of the Board of Directors, President and Chair of the Board of Regents to act for the Board of Directors between meetings.

Although there is generally no voting by proxy at a Board of Directors meeting, an amendment now permits a two-thirds (2/3) Board vote to use proxies or conduct a meeting by telephone.

3. *Board of Regents.* Chairpersons of each federal judicial circuit plus three (3) at large members serve on the Board of Regents. By-Law Amendments now permit members of the Board of Directors to comprise part of a Board of Regents quorum as selected to the Chair of the Board of Regents. Those selected may then vote at the Board of Regents meeting. The Board of Regents may not nominate or elect a non-judicial Fellow on its own initiative.

4. *Fellows-Voting.* Only inducted Fellows in actual attendance at the Annual Meeting of the College may vote (but not by proxy).

## Election of Directors

The election of Directors will be held in conjunction with the annual meeting of the College on April 28, 1994. Five Directors are to be elected. The terms of Richard Gitlin, Gerald Smith and William L. Norton, Jr., are expiring. They are eligible for reelection. In addition, there are two vacancies. The term of a Director is three years.

The Nominating Committee made up of Dick Gitlin, Ray Shapiro, Harry Dixon, Jerry Patchan, Jerry Smith and Merrill Francis will present a recommendation of persons for election as directors. Please contact any member of the Nominating Committee with your recommendations. Additional nominations may be made from the floor.

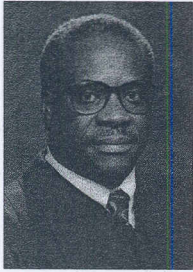
Barbara Everly is in charge of the election process and will distribute written ballots for that purpose. After the tallying of the ballots the results will be announced at the luncheon.

## Wanted:

Copies of your Supreme Court  
briefs, publications and articles for  
the College collection.

# Justice Clarence Thomas: Thoughtful Practitioner of Judicial Restraint

by: Samuel J. Gerdano  
Executive Director  
American Bankruptcy Institute



▲ Justice Clarence Thomas

The American College of Bankruptcy is honored to have Justice Clarence Thomas address the Fellows and invited guests at the Fourth Induction ceremony on April 28. Since joining the Supreme Court in 1991, Justice Thomas has been

perhaps the Court's most active member in the bankruptcy area, authoring the opinion in significant cases such as *Nobelman v. American Savings Bank*, 113 S. Ct. 773 (1993), *Rake v. Wade*, 113 S. Ct. 2187 (1993), *Taylor v. Freeland and Kronz*, 112 S. Ct. 1644 (1992), and the dissent in *United States v. McDermott*, a tax case with bankruptcy implications.

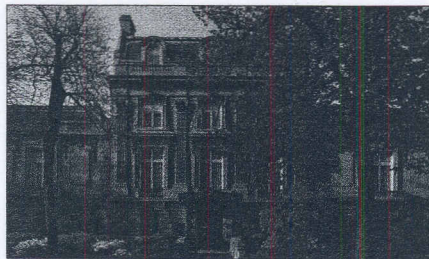
His opinions have been marked by a careful reading of the Bankruptcy Code and other statutes, and by his commitment to the principle of judicial restraint. Justice Thomas believes that courts in a democratic society are to interpret the laws made by Congress, rather than to usurp the role of the legislator by rewriting the statutes under the Court's review. His opinions suggest further that the best evidence of Congressional intent is in the plain language of the statute enacted by Congress, rather than less reliable secondary sources.

In *Nobelman*, Justice Thomas wrote for a unanimous Court that debtors could not use section 506(a) in a Chapter 13 case to "strip down" the undersecured portion of their mortgage to the value of the collateral. This case represented the Chapter 13 equivalent to the Court's earlier pronouncement in *Dewsnup v. Timm*, and resolved a split in the circuits concerning the interpretation and application of section 1322(b)(2) in cases involving an undersecured residential mortgage.

In *Rake*, Justice Thomas again wrote for a unanimous Court that an oversecured home mortgagor is entitled to both pre- and post-petition interest on arrearages when a Chapter 13 debtor elects to cure a default under section 1322(b)(5). Justice Thomas focused on the

creditor's unqualified right, under section 506(b), to post-petition interest on claims until the plan confirmation date, even absent a contractual right to such interest, pursuant to *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989). Justice Thomas declined to read section 1322(b)(5) in a way that would negate section 506(b), giving effect to both provisions created by Congress.

In *Taylor*, Justice Thomas wrote for the majority that a Chapter 7 trustee may not contest the validity of a claimed exemption after the expiration of the 30 day objection period provided in Rule 4003(b), even though the Debtor had no colorable basis for claiming the exemption. Once again, Justice Thomas reasoned from the plain wording of the statute, in this case section 522(l), as well as the Rules of Bankruptcy Procedure.



## "... Such a Place is the Cosmos Club"

The historic Cosmos Club was, from formation in 1879 to 1882 located in three rented rooms in the Corcoran Building, 15th and Pennsylvania. Following that, the Dolley Madison House at 1520 H Street NW (on Lafayette Park) was purchased. We remember that location as the Federal Judicial Center from the late 1950's to 1992.

The move to the present location, 2121 Massachusetts NW, was surrounded by much controversy and nearly resulted in financial ruin for the Club. The former Townsend House and the Judge Curtis J. Hillyer home were incorporated into the elegant structure, and several additional properties have been added.

Now who were the members? Several Presidents of the United States, many Justices of the Supreme Court, members of the Hall of Fame for Great Americans, Nobel and Pulitzer Prize winners, top scientists, writers and artists....or as William Henry Holmes archly enumerated in 1904 at the Club's 25th anniversary dinner:

1. Geologists, Biologists, Anthropologists,

- Chemists and Astronomers—including many scientific men;
- 2. Writers of prose, poetry and editorials—mostly literary men;
- 3. Painters, Engravers, and Sculptors—all men of genius;
- 4. Doctors, Dentists, Physicians and Specialists—but no quacks;
- 5. Lawyers—but no shysters;
- 6. Army and Navy Officers—all heroes;
- 7. Teachers, and Professors, and some Educators;
- 8. Preachers and Ministers—all Divines;
- 9. Bankers and Financiers;
- 10. Designers of buildings—all Architects;
- 11. Statesmen, Diplomats, Secretaries, Directors, Chiefs, Superintendents, Chief Clerks, office holders, and other; some 400 in all, and absolutely select.

The centennial history of the Club contains volumes of details regarding the strong spirited members that have governed it. Tradition is a powerful force at this unique gathering place, the "haven of accomplishment, ... to Bind the scientific men of Washington by a social tie."

The Club history carries an entire chapter on what is referred to as its oldest "member": the wisteria vine that covers a part of the lounge from the West Garden. Permission of the U.S. Government was required, due to its size and historic nature, to move the vine from Dolley Madison House to the present site.

The National Geographic Society organizers held meetings at the Club which resulted, January 9, 1888, in the formation of that Society. "Strangers of distinction" in science, literature and the fine arts, the learned professional or public service were afforded the opportunity to meet at the Club.

After his appointment by Franklin Delano Roosevelt, the Club was the site of meetings held by Arthur Compton, to assign duties to those who were to initiate the atomic bomb program. They first met on December 6, 1941 to organize the program, the day before Pearl Harbor.

Orville and Wilbur Wright lived at the club while the Army was conducting tests of their "Model A Flyer" in 1909 — Orville wrote his sister that it was pleasant but (not being a gregarious fellow) "you can't find a minute to be alone."

A fire broke out in 1957 that caused the fire bell to sound. Members were absorbed in a discussion of whether all matter in the universe was held together by particles that spun right or left. Those engaged in the debate directed the fire bell be turned off so their discussions could continue undisturbed!

The founders did not contemplate women as members. Eventually "privilege cards" were issued — however for a limited area only, with entrance through the "ladies entrance." This was resolved in 1975 when gender distinctions were eliminated but not without some concern, and the resignation of one very prominent member.

Now, after all the planning and innumerable meetings, the Cosmos Club is a beautiful, serene and sophisticated home for its members and guests. Yes, ladies may use the main entrance, too. You will be in an atmosphere seldom duplicated when the College holds its first reception there on April 28, 1994. The Club holds a most important collection of art memorabilia, and a library of unsurpassed proportions.

The Cosmos Club provides the place, the occasion and the opportunity for informal and intimate meeting of minds among those who have to do with the ... nation's intellectual resources that must be assured. The most fruitful meeting — must take place in an atmosphere conducive to free exchange of views and to a certain sort of intellectual expansion; it must also take place where many intellectual roads cross and where ideas of the most different sorts will encounter each other.....

SUCH A PLACE IS THE COSMOS CLUB.

## College Directory Corrections

- Inadvertently Hon. Frank W. Koger's photo appeared on Joel P. Kay's page.
- Updated list of Board of Directors: Margaret Sheneman **should** be listed as a Director.
- Updated list of Board of Regents: Merrill R. Francis, Stuart E. Hertzberg, Louis W. Levit and David T. Sykes **should** appear as Regents. David Coar and Herman Glatt **should not** appear as Regents.
- Lewis S. Rosenbloom is now a Partner with **McDermott, Will & Emery, 227 West Monroe Street, Suite 4400, Chicago, Illinois 60606-5096, telephone (312) 984-6943.**
- Paul F. Festersen has moved his office. His new address is: **Paul F. Festersen, P.C., Suite 900, 1650 Farnam Street, Omaha, NE 68102, telephone (402) 344-3400.**

It was decided at the October 19, 1993 meeting of the Board of Directors that the Directory should be produced every two years with supplements during the "off" years.

If there are any corrections to your entry in the directory, please do not hesitate to contact College Headquarters.

## College Hires New Staff Member



The College welcomes Beth Gilkeson who will be serving as College Coordinator. Beth will be working with

Administrator, Caroline Milani, to handle all activities, publications and administrative functions for the College.

Beth Served as an intern for the American Bankruptcy Institute before being hired by the College.

A native Virginian, Beth is a 1993 graduate of Sweet Briar College in Sweet Briar, Virginia. Outside of work, she enjoys softball and horseback riding.

### American College Of Bankruptcy

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